

CONTRACT NUMBER DEH _____
AGREEMENT WITH _____ FOR VECTOR HABITAT
REMEDATION PROGRAM
GRANT FUNDING

This Grant Agreement (“Agreement”) is made and entered into on the date shown on the signature page (“Effective Date”) by and between the County of San Diego, a political subdivision of the State of California (“County”) and Grantee _____ (“Grantee”), with reference to the following facts:

RECITALS

- A. Pursuant to Board of Supervisors action on January 25, 2012 (3), the County’s Director of the Department of Environmental Health is authorized to award this grant for a project as part of the Vector Habitat Remediation Program.
- B. The Agreement shall consist of this pro forma Agreement, Exhibit A Statement of Work (including Grantee’s proposal), Exhibit B Insurance Requirements, and Exhibit C Funding Schedule. In the event that any provision of the Pro Forma Agreement or its Exhibits, A, B or C conflicts with any other term or condition, precedence shall be: First the Pro Forma; Second Exhibit B; Third Exhibit A; Fourth Exhibit C.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1.1 Standard of Performance. Grantee shall, in good and workmanlike manner and in accordance with the highest professional standards furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities, and all other means whatsoever necessary or proper to complete the project described in Exhibit A. Except for the County financial assistance specified in this Agreement, the project shall be completed to this standard at the cost and expense of Grantee.
- 1.1.2 Grantee’s Representative. The person identified on the signature page (“Grantee’s Representative”) shall ensure that Grantee’s duties under this Agreement shall be performed on behalf of the Grantee by qualified personnel; Grantee represents and warrants that (1) Grantee has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Grantee’s Representative has full authority to act for Grantee hereunder. Grantee and County recognize that the services to be provided by Grantee’s Representative pursuant to this Agreement are unique: accordingly, Grantee’s Representative shall not be changed during the Term of the Agreement without County’s written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1, below, “Termination for Default”, if Grantee’s Representative should leave Grantee’s employ, or if, in County’s judgment, the work hereunder is not being performed by Grantee’s Representative.
- 1.1.3 Project Constraints and Grantee Independence. Grantee is, for all purposes of this Agreement, acting independently of the County and on its own behalf. Neither Grantee nor Grantee’s employees or subcontractors shall be deemed to be employees of the County. Grantee shall perform its obligations under this Agreement in a manner that is consistent with any applicable project description used for California Environmental Quality Act (“CEQA”) compliance or permitting purposes and consistent with any mitigation measure specified pursuant to CEQA, including where relied upon by Grantee the specifications in the County’s EIR for the Vector Habitat Remediation grant program. Grantee acknowledges that these are legal constraints and project specification flowing from the Grantee’s proposal, and are not constraints imposed by County. Within these constraints, Grantee shall proceed according to the Grantee’s own means and methods of work which shall be in the exclusive charge and under the control of the Grantee, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Grantee nor Grantee’s employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers’ compensation benefits and injury leave.
- 1.1.4 Grantee’s Agents Employees and Contractors. Grantee shall obtain, at Grantee’s expense, all agents, employees and contractors required for Grantee to perform its duties under this Agreement, and all such services shall be

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performed by Grantee's Representative, or under Grantee's Representatives' supervision, by persons authorized by law to perform such services. Retention by Grantee of any agent, employee or subcontractor shall be at Grantee's sole cost and expense, and County shall have no obligation to pay Grantee's agents, employees or subcontractors; to support any such person's or entity's claim against the Grantee; or to defend Grantee against any such claim.

Any contract that transfers funds provided under this agreement to a contractor shall include the Standard Terms and Conditions required of Grantee herein. Grantee shall provide Contracting Officer Technical Representative with copies of all contracts relating to this Agreement entered into by Grantee within 30 days after the effective date of the contract. Contractors of Grantee shall be notified of Grantee's relationship to County. "Contractor" means any entity, other than County, that furnishes to Grantee services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services. In the event any contractor is utilized by Grantee for any portion of the project, Grantee retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of contractors in accordance with this Agreement. No contract utilizing funds from this Agreement shall be entered into which has a term extending beyond the ending date of this Agreement.

ARTICLE 2
SCOPE OF WORK

- 2.1.1 Statement of Work. Grantee shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.1.2 Regulatory Authority. Nothing in this Agreement limits the authority of the County to exercise the powers of a vector control district as provided in state law.

ARTICLE 3
COMPENSATION

- 3.1 Elements. The Payment Schedule is in Exhibit C – Pricing Schedule, and the compensation is on the signature page. DEH is precluded from making payments prior to receipt of services (advance payments). Invoices are subject to the requirements set out below.
- 3.2 Fiscal.
 - 3.2.1 DEH will pay Grantee up to the amount set out for each task or milestone in the Pricing Schedule in Exhibit C, for the work specified in Exhibit A, not to exceed verified costs to complete that task or milestone. Cost verifications shall include hours expended by person and shall be based on that person's customary and ordinary billing rates for government-funded work at the time work is performed, unless a lower rate is set out in the grantee's proposal. Grantee may seek a grant amendment to move funds not used to complete a task or milestone to another task or milestone, if another task or milestone has a funding shortfall.
 - 3.2.2 Accounting System and Fiscal Monitoring. Grantee shall provide and maintain an accounting and financial support system to monitor and control costs to assure Agreement completion.
- 3.3 Invoices and Payments.
 - 3.3.1 Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit C and paragraph 3.2.1 above, unless other payment methodologies are negotiated and agreed to by both Grantee and County. Grantee shall submit approved, detailed and itemized original invoices to the Contracting Officer's Technical Representative ("COTR") for work performed in the period, accordingly. The invoice format shall follow the format of the budget included in the application and shall include for

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each task and milestone: budget, invoiced to date, current invoiced amount, and the remaining budget. Required back-Up documentation shall include copies of receipts and invoices paid by the Grantee, and for personnel or contract labor costs the hours expended by person per task, and job title and billing rates per person.

- 3.3.2 Payments. DEH agrees to pay Grantee in arrears only after receipt and approval by COTR of properly submitted, detailed and itemized original invoice referencing the Agreement number documenting the status and accomplishments of Grantee during the billing period. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated. A copy (or copies) of the invoice shall be submitted to the COTR at Dept. of Environmental Health, 5500 Overland Avenue, San Diego, CA 92123.
- 3.4 Full Compensation. Pending any adjustments by the COTR, each invoice approved and paid shall constitute full and complete compensation to the Grantee for all work completed during the billing period pursuant to Exhibit A and Exhibit C. Grantee shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement.
- 3.5 Conditions Prerequisite To Payments. DEH may elect not to make a particular payment if any of the following exists:
- 3.5.1 Misrepresentation. Grantee, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
- 3.5.2 Unauthorized Actions by Grantee. Grantee took any action pertaining to this Agreement, which required County approval, without having first received said County approval.
- 3.5.3 Default. Grantee was in default under any terms and conditions of this Agreement.
- 3.6 Withholding Of Payment. DEH may withhold payment until reports, data, audits or other information required for Agreement administration or to meet County or State reporting or auditing requirements are received and approved by COTR or designee. The County may also withhold payment if, in the County's opinion, Grantee is in non-compliance with this Agreement.
- 3.7 Availability of Funding. DEH's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of DEH shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.
- DEH shall, in its sole discretion, have the right to terminate or suspend Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Grantee in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, DEH and Grantee shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between DEH and Grantee within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.
- In the event of termination of this Agreement in accordance with the terms of this Section, Grantee shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which DEH may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Grantee be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.
- 3.8 Disallowance. In the event the Grantee receives payment for services under this Agreement which is later

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disallowed by DEH, Grantee shall promptly refund the disallowed amount to DEH on request, or at its option, DEH may offset the amount disallowed from any payment due or to become due to Grantee under any Agreement with DEH.

- 3.9 Maximum Price. During the performance period of this Agreement, the maximum price for the items and/or services shall not exceed the lowest price at which Grantee then offers the items and/or services to its most favored customer.

ARTICLE 4
AGREEMENT ADMINISTRATION

- 4.1 DEH's Agreement Administrator. The Director of Environmental Health is designated as the Contracting Officer ("Contracting Officer") and is the only DEH official authorized to make any changes to this Agreement. DEH has designated the individual identified on the signature page as the Contracting Officer's Technical Representative ("COTR").
- 4.1.1 DEH's COTR will chair Grantee progress meetings and will coordinate DEH's administrative functions. The COTR is designated to receive and approve Grantee invoices for payment, audit and inspect records, inspect Grantee services, and provide other technical guidance as required. The COTR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 4.1.2 Notwithstanding any provision of this Agreement to the contrary, the COTR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements, which do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement period or the total Agreement price. A reduction in total payments based on a mutual agreement that an element of the scope of work is not needed can be made through an AA. Each AA shall be in writing and signed by COTR and Grantee. All inquiries about such AA will be referred directly to the COTR.
- 4.2 Agreement Progress Meeting. The COTR and other DEH personnel, as appropriate, will meet periodically with the Grantee to review the Agreement performance. At these meetings the COTR will apprise the Grantee of how the County views the Grantee's performance and the Grantee will apprise DEH of problems, if any, being experienced. The need for any element of the scope of work designated as contingent or flexible through language such as "if needed" or similarly will be discussed. The Grantee shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Grantee considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COTR and the Grantee. Should the Grantee not concur with the minutes, the Grantee shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 5
CHANGES

- 5.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc.) and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by an such order, an equitable adjustment shall be made in the Agreement price

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or delivery schedule, or both, and the Agreement shall be modified in writing accordingly.

- 5.2 Claims. Grantee must assert any claim for adjustment under this clause within 30 days from the date of receipt by the Grantee of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Grantee's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Grantee from proceeding with this Agreement as changed.

ARTICLE 6
TERMINATION

- 6.1 Termination For Default. Upon Grantee's breach of this Agreement, DEH shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, DEH will send Grantee written notice specifying the cause. The notice will give Grantee 10 days from the date the notice is issued to cure the default or make progress satisfactory to DEH in curing the default, unless a different time is given in the notice. If DEH determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, DEH may terminate this Agreement immediately upon issuing oral or written notice to the Grantee without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Grantee under this Agreement shall become the sole and exclusive property of County. In the event of such termination, DEH may purchase or obtain the supplies or services elsewhere and the Grantee shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to DEH. The prevailing market price shall be considered the fair repurchase price.

Notwithstanding the above, Grantee shall not be relieved of liability to County for damages sustained by DEH by virtue of any breach of this Agreement by Grantee, and DEH may withhold any reimbursement to Grantee for the purpose of off-setting until such time as the exact amount of damages due DEH from Grantee is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Grantee was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 6.2 Termination for Convenience. DEH and Grantee may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. DEH shall pay the Grantee as full compensation for work performed in accordance with the terms of this Contract until such termination:
- 6.2.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 6.2.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Grantee as approved by DEH, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 6.2.3 In no event shall DEH be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 6.3 Remedies Not Exclusive. The rights and remedies of DEH provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

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ARTICLE 7
COMPLIANCE WITH LAWS AND REGULATIONS

- 7.1 Compliance with Laws and Regulations. Grantee shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, City and DEH laws and regulations.
- 7.2 Grantee Permits and License. Grantee certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. DEH reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 7.3 Equal Opportunity. Grantee shall comply with the provisions of [Title VII of the Civil Rights Act of 1964](#) in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Grantee discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 7.4 Affirmative Action. Each Grantee of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in [Article IIIk \(commencing at Section 84\)](#) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COTR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 7.5 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use [Policy C-25](#). This policy provides that all County-employed Grantees and Grantee employees shall assist in meeting this requirement.
- 7.5.1 As a material condition of this Agreement, the Grantee agrees that the Grantee and the Grantee employees, while performing service for the County, on County property, or while using County equipment:
- 7.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 7.5.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 7.5.1.3 Shall not sell, offer, or provide alcohol or a drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Grantee or Grantee employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 7.5.2 Grantee shall inform all employees who are performing service for DEH on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 7.5.3 DEH may terminate for default or breach this Agreement, and any other Agreement the Grantee has with DEH, if the Grantee, or Grantee employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.

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- 7.6 Grantee represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors: Board Policy B-67, which encourages the County's Grantees to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements.
- 7.7 Cartwright Act. Following receipt of final payment under the Agreement, Grantee assigns to the County all rights, title and interest in and to all causes of action it may have under [Section 4 of the Clayton Act \(15 U.S.C. Sec. 15\)](#) or under the [Cartwright act \(Chapter 1\) \(commencing with Section 16700\) of Part 2 of Division 7 of the Business and Professions Code](#)), arising from purchases of goods, materials, or services by the Grantee for sale to the County under this Agreement.
- 7.8 Hazardous Materials. Grantee shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Grantee agrees that it will not store any Hazardous Materials at any County Facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Grantee agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the DEH, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Grantee agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the DEH of it. Grantee shall not be liable to the DEH for the DEH's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the DEH or Lessee with respect to any third person under any Environmental Laws.

ARTICLE 8

CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 8.1 Conflicts of Interest. Grantee presently has no interest, including but not limited to other projects or independent Agreements and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Grantee shall not employ any person having any such interest in the performance of this Agreement.
- 8.2 Conduct of Grantee. Privileged Information.
- 8.2.1 Grantee shall inform DEH of all the Grantee's interests, if any, which are or which the Grantee believes to be incompatible with any interests of the County related to this project.
- 8.2.2 The Grantee shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Grantee is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 8.2.3 Grantee shall not use for personal gain or make other improper use of privileged information, which is

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acquired in connection with his employment. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Grantees or subcontractors in advance of official announcement.

- 8.2.4 The Grantee, or employees thereof, shall not offer directly or indirectly gifts, gratuity, favors, entertainment, or other items of monetary value to an employee or official of the County.
- 8.3 Prohibited Agreements. As required by [Section 67 of the San Diego County Administrative Code](#), Grantee certifies that it is not in violation of the provisions of Section 67, and that in connection with this project Grantee is not, and will not contract with, any of the following:
- 8.3.1. Persons employed by DEH; or
- 8.3.2 Profit-making firms or businesses in which employees described in sub-section 8.3.1, above, serve as officers, principals, partners, or major shareholders;
- 8.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 8.3.4. Profit-making firms or businesses in which the former employees described in sub-section 8.3.3 above, serve as officers, principals, partners, or major shareholders.

ARTICLE 9
INDEMNITY AND INSURANCE

- 9.1 Indemnity. DEH shall not be liable for, and Grantee shall defend and indemnify DEH and the County and the employees and agents of DEH and the County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Grantee or its Grantees, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. Grantee shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
- 9.2 Insurance. Prior to execution of this Agreement, Grantee must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

ARTICLE 10
AUDIT AND INSPECTION OF RECORDS

DEH shall have the audit and inspection rights described in this section.

- 10.1 Cost or Pricing Data. If the Grantee submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of DEH or its

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agent shall have the right to examine all books, records, documents and other data of the Grantee related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

10.2 Availability. The materials described above shall be made available at the office of the Grantee, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.3.1 and 11.3.2, below:

10.3 Subcontract. The Grantee shall insert a clause containing all the provisions of this Article 11 in all contracts hereunder except as altered as necessary for proper identification of the Contracting parties and the Contracting officer under the County's Grant Agreement.

10.3.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

10.3.2 Record which relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.

ARTICLE 11
INSPECTION OF SERVICE

11.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Grantee shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Grantee's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Grantee's performance.

11.2 Specification and Requirements. If any services performed by Grantee do not conform to the specifications and requirements of this Agreement, DEH may require Grantee to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Grantee correctly performs them. When the services to be performed are of such a nature that Grantee's cannot correct its performance, the County shall have the right to (1) require the Grantee to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Grantee fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by Agreement or otherwise, in conformance with the specifications of this Agreement, and charge Grantee, and/or withhold from payments due to Grantee, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 12
USE OF DOCUMENTS AND REPORTS

12.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Grantee under this Agreement which the County requests to be kept as confidential shall not be made available to any individual or organization by the Grantee, except as required by state or federal law, without the prior written approval of the

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County.

- 12.2 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

ARTICLE 13
PURPOSE

County and Grantee acknowledge that the funds are being provided to fulfill the work described in the Statement of Work in Exhibit A.

ARTICLE 14
DISPUTES

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Grantee shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law.

ARTICLE 15
GENERAL PROVISIONS

- 15.1 Assignment. Grantee shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of DEH; DEH's consent shall not be unreasonably withheld.
- 15.2 Contingency. This Agreement shall bind DEH only following its approval by the Board of Supervisors or when signed by the Director of the Department of Environmental Health.
- 15.3 Entire Agreement. This Agreement, together with all Sections attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Grantee and requests for proposals from County, are superseded.
- 15.4 Sections and Exhibits: All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 15.5 Further Assurances: Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 15.6 Governing Law: This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 15.7 Headings: The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 15.8 Modifications; Waivers: Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 15.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be

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deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.

- 15.10 No Other Inducement: The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 15.11 Notices. Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be to the COTR and Grantee's Representative identified on the signature page.
- 15.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 15.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 15.14 Time. Time is of the essence of each provision of this Agreement.
- 15.15 Time Period Computation. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and State or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.
- 15.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

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SIGNATURE PAGE

AGREEMENT TERM. This Agreement shall be effective this first day of _____ (“Effective Date”) and end on June 30, 2013 (“Initial Term”).

OPTION TO EXTEND. The County’s option to extend is for one (2) increment of one (1) year(s) each for a total of two (2) years beyond the expiration of the Initial Term, not to exceed June 30, 2015. Payments during any extension period shall be based on milestones specified in Exhibit C. All payments are subject to “Availability of Funds.”

COMPENSATION: Pursuant to Exhibit C, County agrees to pay Grantee a sum not to exceed \$_____ for completion of the work set out in the Statement of Work, whether that work is completed during the Initial Term of this Agreement or during an extended term, in accordance with the method of payment stipulated in Article 4.

COTR. The County has designated the following individual as the Contracting Officer’s Technical Representative (“COTR”)

Susan Vaughn
5500 Overland Avenue
San Diego, CA 92123
Phone (858) 505-6694, FAX (858)505-6890
Susie.Vaughn@sdcounty.ca.gov

CONTRACTOR’S REPRESENTATIVE. The Grantee has designated the following individual as the Grantee’s Representative.

CONTACT NAME
GRANTEE
ADDRESS
PHONE/FAX
EMAIL ADDRESS

IN WITNESS WHEREOF, County and Grantee have executed this Agreement effective as of the date first set forth above

DEPARTMENT OF ENVIRONMENTAL HEALTH

GRANTEE

By: _____
JACK MILLER, Director
Department of Environmental Health

By: _____

PRINT NAME, Title

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
Senior Deputy County Counsel

Date: _____

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EXHIBIT B – INSURANCE AND BONDING REQUIREMENTS

INSURANCE REQUIREMENTS FOR CONSULTANT

Without limiting Consultant's indemnification obligations to County, Consultant shall provide at its sole expense and maintain during the term of this Agreement and for such other period as may be required, insurance specified in this Agreement.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services, Office form CG0001.
- B. Automobile Liability covering all owned, non owned and hired auto, Insurance Services Office form CA0001.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Errors and Omissions Liability required if Consultant provides or engages any type of professional services including but not limited to engineers, architects, software designers, auditors.

2. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, Independent Grantees Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of County of San Diego.
- D. Professional Errors and Omissions Liability: \$1,000,000 per claim with an aggregate limit of not less than \$2,000,000. Any self-retained limit shall not be greater than \$25,000 per occurrence/event without County's Risk Manager's approval. Coverage shall include contractual liability coverage. If policy contain one or more aggregate limit, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any such aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Consultant to restore the required limits. This coverage shall be maintained for a minimum of two years following termination of completion of Consultant's work pursuant to the Contract.

3. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the County's Risk Manager. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions. The general liability, automobile liability, professional liability shall contain, or be endorsed to contain the following provisions:

- A. Additional Insured endorsement (Does not apply to professional liability)
Any general liability policy provided by Consultant shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.
- B. Primary Insurance endorsement
For any claims related to this project, Consultant's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

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EXHIBIT B – INSURANCE AND BONDING REQUIREMENTS

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Agreement entitled "Notices".

GENERAL PROVISIONS

- 5. Qualifying Insurers.** All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.
- 6. Evidence of Insurance.** Prior to commencement of this Agreement, but in no event later than the effective date of the Agreement, Consultant shall furnish the County with certificate of insurance and amendatory endorsements effecting coverage required by this clause. Copies of renewal certificates and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy.
- 7. Failure to Obtain or Maintain Insurance; County's Remedies.** Consultant's failure to provide insurance specified or failure to deliver certificates of insurance, or failure to make premium payments required by such insurance, shall constitute a material breach of the Agreement, and County may, at its option, terminate the Agreement for any such default by Consultant.
- 8. No Limitation of Obligations.** The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- 9. Review of Coverage.** County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Consultant to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- 10. Self-Insurance.** Consultant may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in the Agreement under a plan of self-insurance. Consultant shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Consultant's (i) net worth, and (ii) reserves for payment of claims of liability against Consultant, are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. Consultant's utilization of self-insurance shall not in any way limit liabilities assumed by Consultant under the Agreement.
- 11. Claims Made Coverage.** If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - A. The policy retroactive date coincides with or precedes Consultant's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 - B. Consultant will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
 - C. If insurance is terminated for any reason, Consultant shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Agreement.
 - D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- 12. SubGrantees' Insurance.** Consultant shall require that any and all subGrantees hired by Consultant are insured in accordance with this Agreement. If any subGrantee's coverage does not comply with the foregoing provisions,

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EXHIBIT B – INSURANCE AND BONDING REQUIREMENTS

Consultant shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subGrantees failure to maintain required coverage.

- 13. Waiver of Subrogation.** Consultant and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Agreement), but only to the extent that the proceeds received from any policy of insurance carried by County or Consultant, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Consultant hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.

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EXHIBIT C – PRICING

The County will release grant funds for completed work. As set out below, the grant amounts are budgeted either for a task or completion of a milestone. The amounts budgeted for individual tasks or milestones are the maximum amount of funds that will be released for that individual task or milestone. Budget shall not be transferred between tasks or milestones unless an Administrative Adjustment is made by the COTR and signed by both the COTR and the Grantee. If this grant designates an amount for project maintenance after initial work is complete, the “grant amount” to which percentages are applied in the milestones below excludes that set aside.

Total for project - \$

County will confirm prior to payments being issued, that each milestone has been completed in the agreed upon manner as described in Exhibit A – Statement of Work.

See Attachment – Proposed Budget for _____